

No. 9(1)-81/6 Lab./14942.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired), Sole Arbitrator in respect of the dispute between Shri Chandramapal, son of Shri Hari Pal, workman and the management of M/s Hindustan Everest Tools Ltd., Jatheri, Sonepat.

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DEPUTY LABOUR COMMISSIONER HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI-110027

SHRI CHANDRAMAPAL, SON OF SHRI HARI PAL

versus

THE MANAGEMENT OF M/S HINDUSTAN EVEREST TOOLS LTD., JATHERI, SONEPAT

Appearances—

1. Shri Chandramapal, along with Shri Chander Singh.
2. Shri U. C. Pant along with Shri D. N. Gupta.

ARBITRATION AWARD

The above-named parties appointed me as a Sole arbitrator in terms of the arbitration agreement dated 1st May, 1981, under section 10A(3) of the Industrial Disputes Act, 1947. The said arbitration agreement was published in the *Haryana Government Gazette* (Extraordinary),—*vide* No. ID/RTK/67/81/26868, dated 27th May, 1981.

The following point in dispute was referred to me for arbitration:—

- (1) Whether the action taken by the management was justified and if not, to what relief the workman is entitled to ?

On receipt of the notification, usual notices were sent to the party. The parties made their appearance and filed their respective pleadings. The management filed copies of documents in support of their contention in this case while the representative of the workman filed collective documents on behalf of the Union not being written by any individual worker. The following issues were framed on the basis of their pleadings with their consent:—

- (1) Whether the workman was unauthorisely absent exceeding 10 days from duty?
- (2) Whether the action taken by the management tantamounted to retrenchment, if so, to what relief he is entitled to ?

Thereafter the parties led their evidences. The workman examined himself as his own witness. Shri Chandramapal told that he was on Dharna from 18th March, 1981 to 3rd April, 1981, at Nehru Place (H. O. of the Company) in sympathy with two hunger-strikers. He added that he did not receive any letter from the management regarding his absence from the duty during this period and used to raise slogans in support of the demand being member of the Union. He further told that he had no knowledge about the rules and regulations of the Company and was not taken back on duty after the Dharna was lifted. In his cross-examination he stated that he was on duty on 17th March and added that he proceeded on leave for 16th and 17th of March, 1981. He admitted that he neither applied for leave while resorting to Dharna nor informed the management for this purpose. He told that did not know about the contents of his written claim nor the date when it was filed by him. He denied the receipt of letters dated 23rd and 28th March, 1981, sent by the management under UPC nor the Registered A/D letter sent to him on 2nd April, 1981 which was returned by the postal authorities with the remarks “सेने से इन्कार वापस” on 5th April, 1981. He admitted his postal address as correct. He denied his signatures on application form for employment Exh. M-2, but he identified his signature on appointment letter dated 22nd October, 1979, Exh. M-1 wherein applicability etc., of standing order has been laid-down. He admitted that no worker can be absent from duty without proper sanction from the management. He told that he could not name the Chowkidar who stopped him at gate on 4th April, 1981. He further admitted that he did not write to the management requesting for taking him back on duty after the was stopped by the watchman on 4th April, 1981. He told that there were about 30—40 workers when he resorted Dharna on 18th March, 1981 and others used to come and go. He could not tell the name of any workman who joined Dharna subsequently to his resorting to Dharna.

While the management examined Sary/Shri U.C. Pant, Deputy Manager (Personnel), Shri R.K. Dixit (Personnel Officer), Shri Hira Singh, Head Watchman, Shri Rajpal and Shri Niranjan Singh, Watchmen, as witnesses, whose recorded statements are on file and the management closed the case.

The parties advanced their arguments as under and gave the same in writing. The learned representative of the workman assailed the action of the management on the ground that there was no disobedience or defiance of the standing order which could compel the management to invoke clause 15 of the standing orders. He viewed that the workman was on peaceful agitation following the Gandhian principles for acceptance of their justified demand and the dharna was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off his name was uncalled for. He further elucidated that there are no such circumstances that he had left the services or had any such intentions. In this case he relied on the Rulings in cases of :—

- (1) G.T. Lad *Versus* Chemical & Fibres India Ltd., 1979-LIC P. No. 290.
- (2) Buckingham Co. *Versus* Venkatiah-1963-LLJ P. No. 638.

He also questioned the bona fide of the management in acting in harsh and hard manner to crush the peaceful and constitutional activities of the Union and also challenged the action of the management that the termination tantamounted to retrenchment in the light of the recent pronouncements of the Supreme Court viz. State Bank of India *Versus* Subramaniam, Hindustan Steel Ltd. *versus* Presiding Officer, Labour Court, D.C.M. *Versus* Shambunath Mukherjee etc. He accordingly pleaded that the management while not observing the conditions precedent to retrenchment committed illegality, thus the workman is entitled to reinstatement with full wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation, it has also been admitted that no written request was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman on dharna, period of dharna etc. have different versions and thus cannot be accepted that a group of workers, i.e., 31 or so were constantly on dharna. He refuted the allegations of the learned counsel from the opposite that the management adopted negative/stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position,—*vide* their letters dated Exhibit W-7 and W-8 and their stand has been vindicated by the Labour Department, Haryana, by rejecting the demand notice,—*vide* endorsement No. 38707, dated 21st August, 1981. It is obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out to the falacious statements that all absentees were to the factory on 4th April, 1981, to report for duty which has been forcefully rebutted in the witnesses of M/s Hira Singh, Head Watchman, and Rajpal and Niranjan Singh, watchmen. He also pointed that there no truth in the statement of Sarvshri Jagbeer Singh and Janardha Ojha that they reported for duty on 19th April, 1981, which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, watchman, who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the management on hunger-strike/dharna which was said to have been resorted to by a negligible minority of the 31 workers out of 150 workers employed and added that factum of recall notices issued by the management have been admitted by the Union,—*vide* letter Exhibit W-5.

As regards issue No. 2, he argued that "Retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of Five Judges of the Supreme Court in a case "Barsi Light Railway Co. Ltd. *versus* K.N. Jogalekar in 1953" and still holds good being the judgement of a larger bench. He further viewed that judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case:—

- (1) DCM *versus* Shambunath Mukherjee.
- (2) State Bank of India *versus* Subramaniam and others.

He pointed out that a Division bench of Bombay High Court have held in case of Kamlesh Kumar Rajnikant Mehta *versus* Central Government Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment—1980 LLJ 336 (Bombay). He accordingly pleaded that the "surplusage" for retrenchment is implicit in the scheme of Industrial Disputes Act, and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have gone through the evidence as well as pleas advanced while arguing the case. My findings issue-wise are as under :—

(1) From the facts and evidence it is clear that there was unrest amongst some workers due to demands raised by their union. It is also proved that the demands raised by the Union were not considered fit for any action in view of the subsisting settlements dated 7th February, 1977 and 12th October, 1978, as pointed out by the Labour Department and thus rejected,—*vide* its letter No. 38707, dated 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of dharna nor he made any application for leave for his absence. Besides it is on record that the management sent him letters (recall notices) under UPC and admitted in an indirect manner by the Union, —*vide* their letter dated 17th March, 1981, Exb. W-5. More so the management did send Registered A/D letter which was returned by the postal authorities with remarks “*लेने से इनकार बापिस*” The workman has also admitted that he did not write to the management about his resumption of his duties, after refusal by the management on 4th April, 1981. The factum of having reported on the 4th April, 1981, has also not been proved. This all goes to establish that the workman remained absent unauthorisedly from _____ to _____ which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the management under clause 15 of the standing order.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no dis-obedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of “recall notices” issued to him by the management and deliberately ignored by him. Nor the plea of *mala fide* or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further I am inclined to accept the argument of the management counsel that the standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issued No. 1 is decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workmen have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition in section 2(oo) of the Industrial Disputes Act, 1947, means termination by the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the standing order which is reproduced below is quite material and different from that of the D.C.M.

Clause No. 15 of the Certified Standing Order

Discontinuation of service

If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12(b) he shall lose lien on his appointment and it shall be deemed that he has left the services from the date of his absence unless he explains his absence satisfactorily to the management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 days (fifteen) wages for every completed year of service to the workman which would be equivalent to the compensation payable under section 25(F)(b) of the Industrial Disputes Act, 1947, besides his other dues, by him undisbursed with the management.

Dated, the 19th November, 1981.

J. D. MEHTA,

Sole Arbitrator.

Forwarded (four copies) to the Secretary, Haryana Government, Chandigarh, Labour and Employment Department, as required under section 17 of the Industrial Disputes Act, 1947, for favour of necessary publication in the Haryana Government Gazette.

J. D. MEHTA,

Sole Arbitrator.

No. 9(1)-81/6- Lab./14927.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired), Sole Arbitrator in respect of the dispute between Shri Munshi Ram, son of Shri Sheesh Ram, workman and the management of M/s Hindustan Everest Tools Ltd., Jatheri, Sonepat.

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DEPUTY LABOUR COMMISSIONER, HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI-110027

SHRI MUNSHI RAM, SON OF SHRI SHEESH RAM

(WORKMAN.)

versus

THE MANAGEMENT OF M/S HINDUSTAN EVEREST OLS LTD., JATHERI, DISTRICT SONEPAT (HARYANA)

Appearances

1. Shri Munshi Ram, along with Shri Chander Singh, authorized representative.
2. Shri U.C. Pant (Dy. Manager, Personnel) along with Shri D.N. Gupta.

ARBITRATION AWARD

The above named parties appointed me as Sole Arbitrator in terms of Arbitration agreement dated 29th April, 1981, under section 10A(b) of the Industrial Disputes Act, 1947. The said arbitration agreement was published in the Haryana Government Gazette (Extra Ordinary),—*vide* No. ID/RTK/67/81/26756, dated 27th May, 1981 :—

The following point in dispute was referred to me for arbitration :—

- (1) Whether the action taken by the management was justified and if not, to what relief the workman is entitled to?

Usual notices were issued to the parties. In response to the notices, the parties made their appearances, filed statement of claims, written statement and rejoinder. The management filed copies of documents in support of this case, whereas the documents collectively were filed by the workman's representatives. The pleadings of the parties gave rise to the following issues which were framed with their consent :—

- (1) Whether the workman remained unauthorisedly absent exceeding 10 days (to n) from duty?
- (2) Whether the action taken by the management tantamounts to retrenchment. If so, to what relief he is entitled to?

The parties produced their evidences. The workman examined himself as witness. Shri Munshi Ram deposed that he resorted to Dharna after 17th March, 1981 and continued sitting with the two hunger-strikers in support of justified demands raised. He added that he did not have any knowledge about standing orders/rules of the Company. He further stated that he went for duty on 4th April, 1981, but was stopped by the watchman. He also deposed that other trade union leaders used to come to Nehru Place (Head Office of the Company) but he could not remember their names and has not been paid any compensation by the management. In his cross examination, he admitted that he could not tell the exact date on which he joined the Dharna though the Dharna was started on 9th March, 1981 nor he could tell the name of other workers who joined Dharna after his joining, i.e. after 17th March, 1981. He admitted that his postal address is correct, but denied to have received any letter dated 26th March, 1981 and 24th March, 1981, sent by the Management under UPC. He, however, admitted that he did refuse to accept the letter on 6th April, 1981, as he was not at his residence. He also admitted that he did not write nor approached the management for taking him back on duty after the incident of 4th April, 1981. Nor he made any request to the management for payment of his service compensation.

While the management examined Sarvshri U.C. Pant, Dy. Manager (Personnel) and Mr. R.K. Dixit (Personnel Officer), Hira Singh, Head Watchman, Rajpal Singh and Niranjan Singh, Watchmen, as witness.

Shri Pant stated that he visits H.O. (Nehru Place) as an official routine and also visited the same during 9th March, to 3rd April, 1981. He met Sarvshri Jagbeer Singh and Janardhan Ojha and exchanged 'Ram Ram' as well as with some other workers too. He further stated that there were many workers, who after performing their duties visited Nehru Place for Dharna and the number varied from time to time, as the number was no fixed nor workers. He stated that the list of workers who are dismissed, discharged, or resigned etc. is given to the Security Supervisor, to ensure that these workers are not allowed to enter the factory again. Only two workers, namely, Sarvshri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981, as told to him by Shri Hira Singh, Head Watchman. But these workers did not wait at the gate for meeting him though he did not take more than half an hour to reach his office. He further deposed that there was intervention from the Labour Department but without any fruitful result. A copy of the Standing Order is displayed on the notice board and the leave procedure is generally known to the workers. He added that the workers, whose case are under arbitration did not send any written explanation regarding their unauthorised absence despite notices issued excepting two workers, namely, Sarvshri Jagbeer Singh and Janardhan Ojha, who requested to take back on duty which was received very late. In his cross-examination, he admitted that there was conciliation meeting on general demand dated 6th January, 1981, which has since been rejected and filed by the Labour Department,—*vid* their endorsement No. 38707, dated 21st August, 1981. He denied to have received the hunger-strike notice,—*vid* letter dated 16th March, 1981, Exb. W-4. He further confessed to have met the Labour Minister, Haryana, when the Dy. Labour Commissioner, Sonepat, had called a conciliation meeting where he explained the factual position to the Minister. He denied the receipt of letter dated 17th March, 1981 Exb. W-5 but admitted that letters dated 3rd April, 1981, Exb. W-6 and the management letter dated 15th March, 1981, Exb W-7, letter dated 17th March, 1981, Exb. W-8 and letter dated 19th September, 1981 and Exb. W-9. He later denied that the names of the workmen have been struck off and affirmed that the workers who lost their job on employment were due to unauthorised absence and denied any such action has been taken due to their union activities.

Shri Hira Singh, Head Watchman, stated that he was on duty on 4th April, 1981 from 7 a. m. to 7 p. m. Sarvshri Ram Chander and Suresh Kumar approached him at about 9 a. m., after being denied the entry by the watchman and wanted to meet Shri U.C. Pant. He went inside to seek instruction from Shri Pant, who instructed him to bring them in his office. But on this return he did not find Sarvshri Ram Chander and Suresh Kumar.

at the gate. He added that no other workman came to the gate and met him on that day. In his cross-examination, he affirmed that he was on duty on 4th April, 1981 and denied any knowledge about Dharna by workers in Nehru Place. He also added that no other workman excepting S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981. He vehemently denied that he has been tutored by the Management to tender his evidence.

Shri Rajpal and Shri Niranjan Singh, Watchmen, deposed that they were on duty on 4th April, 1981, at gate No. 1. Only S/Shri Ram Chander and Suresh Kumar were refused entry on that day on the advice and instructions received from the Management and the head-watchman was informed, who took further action. They further added that no other workman came on that day and stated that they know the leave procedure as well as the Standing Order. Shri Rajpal, watchman, deposed that he was on duty on 19th April, 1981, from 7 A.M. to 3. P.M. 19th April, 1981, being Sunday, the Factory was closed being weekly rest day, the question of S/Shri Janardhan Ojha and Jagbeer Singh coming on duty on that day does not arise.

In his cross-examination, he told that he knew S/Shri Janardhan Ojha and Jagbeer Singh. He told that he gets knowledge about standing orders from Time Office and there was no other workers at gate excepting S/Shri Ram Chander and Suresh Kumar on 4th April, 1981.

Shri Rakesh Kumar Dixit (Personnel Officer) while tendering the evidence explained the procedure adopted in case of absenting workers and showed the Muster Roll for the year 1981 wherein the word "Left" have been recorded against the name of workers whose cases are under arbitration. He also deposed that he heard that workers namely Vikram Pal, Chander Pal, Ram Chander and Bagedan Parshad had got employment with M/s. Super Tools and Zandu Forgings, Bhiwadi (Raj).

In his cross-examination he could not tell the name of the worker, who gave this information to him nor he had any knowledge about the agitation as he joined subsequently.

The parties also advanced their arguments :

The learned representative of the workmen, drew my attention to the illegality of the orders passed by the Management by invoking clause No. 15 of the Standing Order as there was no dis-obedience and defiance of the standing orders. He viewed that the workmen were on peaceful agitation following the Gandhian principles for the acceptance of their justified demands and the Dharna was within the knowledge of the management. Thus, it could not be considered as absent from duty and striking off their names was uncalled for. He further elucidated that there are no such circumstances from which it can be inferred that they had left the services or had any such intentions. In this connection he relied on the following awards contained in the cases cited below :—

- (1) G.T. Lad *Versus* Chemical and Fibres India Ltd.-in 1979-LIC page No. 290.
- (2) Buckingham Company *Versus* Venkatiah-LLJ 1963 page No. 639.

He also questioned the bona fide of the management in acting in harsh and perverse manner to crush the peaceful and constitutional activities of the union. He further challenged the action of the management that the termination tantamounted to retrenchment in the light of recent pronouncements of the Supreme Court as under :—

- (1) State Bank of India *Versus* Subramaniam-1967-1-LLJ-278.
- (2) Hindustan Steel Ltd. *Versus* Presiding Officer, Labour Court-1976 LIC-766.
- (3) Delhi Cloth & General Mills Co. Ltd. *Versus* Shambunath Mukherjee-1980 LLJ-page No. 1.
- (4) Mohanlal *Versus* Bharat Electronics Ltd. 1981-Page LIC-806.
- (5) Santosh Gupta *Versus* State Bank of Patiala, LIC 1980-687.

He accordingly contended that the management did not observe the conditions precedent to retrenchment and committed illegality, thus the workmen are entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workmen accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written request was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was on Dharna excepting his lone statement. The number of workmen on Dharna, period of dharna etc. have different versions and thus cannot be accepted that a group of workers i.e. 31 or so were constantly on dharna. He refuted the allegations of the learned counsel from the opposite side that the management adopted negative/sterile attitude about the demand notice, dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as justified position, *vide* their letters dated Exb. W-7 and W-8 e

and their stand has been vindicated by the Labour Department, Haryana, by rejecting the demand notice,—*vide* endorsement No. 38707, dated 21st August, 1981. It is, obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out to the falacious statements that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnesses of S/Shri Hira Singh, Head Watchman and Rajpal and Jiranjan Singh, Watchmen. He also pointed that there is no truth in the statement of S/Shri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981, which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, Watchman who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation, nor every absentee can be presumed by the Management on hunger strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the Union,—*vide* letter Exhibit W-5.

As regard to issue No. 2, he argued that 'Retrenchment' would constitute termination of service by the employer but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of five judges of the Supreme Court in a case "Barst Light Railway Co. Ltd. Versus K.N. Jogalekar" in 1953 and still holds good being the judgement of a Larger Bench. He further viewed that judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case :—

- (1) DCD *Versus* Shambunath Mukherjee ;
- (2) State Bank of India *Versus*,—P Subramaniam ;
- (3) Hindustan Steel Ltd., *Versus* Presiding Officer, Labour Court, Orissa.

He pointed out that a division bench of Bombay High Court have held in case of Kamlesh Kumar Rajnikant Mehta *Versus* Central Government Industrial Tribunal No. 1, that the termination of services of workmen for loss of confidence is not a retrenchment-1980 LLJ 336 (Bombay). He accordingly pleaded that the "surplusage" for retrenchment is implicit in the scheme of Industrial Dispute Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidence adduced by the parties as well as arguments advanced in support of their contentions. My findings issue-wise are as under :—

- (1) From the facts and evidence, it is clear that there was unrest amongst some workers due to demand raised by their union. It is also proved that the demands raised by the Union were not considered fit for any section in view of the subsisting settlements, dated 7th February, 1977 and 12th October, 1978, as pointed out by the Labour Department and thus rejected,—*vide* its letter No. 38707, dated 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of dharna nor he made any application for leave of his absence. Besides, it is on record that the Management sent him letters (Recall notices) dated under UPC and admitted about receipt of letters in an indirect manner by the Union,—*vide* their letter Exb. W-5, dated 17th March, 1981. More so, the management did send Registered A./D. letter which was returned by the postal authorities with remarks. The workman has also admitted that he did not write to the goes management about his resumption of his duties, after refusal by the management on 4th April, 1981. This all to establish that the workman remained absent unauthorisedly from to which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the Management under clause 15 of the standing order.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no dis-obedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of "recall notices" issued to him by the Management and deliberately ignored by him. Nor the plea of *mala-fide* or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the Management for resumption of duties. Further, I am inclined to accept the argument of the Management counsel that the standing orders have got the force of law and deeming provision take form of law it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue number 1 is decided in favour of the Management. As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in his case. The retrenchment as given in the definition contained in section 2 (oo) of the Industrial Dispute Act, 1947, means termination by the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold, the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the Standing Order which is reproduced below is quite material and different from that of the DCM.

Clause No. 15 of the Certified Standing Order*Discontinuation of Service*

If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 & 12(b) he shall lose lien on his own appointment and it shall be deemed that he has left the services from the date of his absence unless he explains his absence satisfactorily to the management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman I award 15 days' (fifteen) wages for every completed year of service to the workman, which would be equivalent to the compensation payable under section 25(F)(b) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the management.

Dated the 16th November, 1981

J. D. MEHTA,
Sole Arbitrator.

Forwarded (four copies) to Secretary, Haryana Government, Chandigarh, Labour and Employment, as required under section 17 of the Industrial Disputes Act, 1947.

J. D. MEHTA,
Sole Arbitrator.

No. 9(I)-81/6-Lab./13917.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana, (retired), Sole Arbitrator, in respect of the dispute between Shri Dewan Singh, son of Shri Devi Singh, workman and the management of M/s Hindustan Everest Tools Ltd., Jatheri Sonepat:—

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DEPUTY LABOUR COMMISSIONER, HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI

SHRI DEWAN SINGH, SON OF SHRI DEVI SINGH (WORKMAN)

Versus

THE MANAGEMENT OF M/S HINDUSTAN EVEREST TOOLS LTD., JATHERI, SONEPAT (HARYANA)

Appearances—

1. Shri Dewan Singh, along with Shri Chander Singh, authorised representative.
2. Shri U.C. Pant, alongwith Shri D.N. Gupta.

ARBITRATION AWARD

The parties named-above appointed me as a sole Arbitrator in terms of Arbitration agreement, dated 18th May, 1981, under section 10-A(3) of the Industrial Disputes Act, 1947. The Arbitration agreement was published in the *Haryana Government Gazette (Extraordinary)* dated 27th May, 1981.

The following point in dispute was referred to me for arbitration :

- (1) Whether the action taken by the management was justified and if not to what relief the workman is entitled to.

Notices were issued to the parties. The parties made their appearances, filed statement of claims, in the statement as well as rejoinder. The workman and management filed copies of document in support of their contention.

The following issues were framed on the basis of their pleadings with their consent :

- (1) Whether the workman was un-authorisedly absent from duty exceeding 10 (ten) days or sick on medical ground.
- (2) If the letter reply is affirmative, to what relief he is entitled to.

The parties had their evidence of arguments.

Shri Dewan Singh examined himself as well as Shri Hukam Chand as witness.

Shri Dewan Singh deposed that he was sick from 25-3-81 to 25-5-81 and sent medical certificates (copies filed) to this effect to the management. He reported for duty on the 26th May, 1981, along with fitness certificate, but was refused entry by the Watchman. He further added that he approached Shri Hukam Chand, Office Secretary of the Union, who advised him to execute an Arbitration Agreement as done by other workmen. So I signed the agreement and did not raise demand notice for reinstatement.

In his cross-examination he admitted to have signed the statement of claims without knowing its content and added that the postal address written by the Management was incorrect. He further admitted that he had no knowledge of Dharna nor he was on Dharna.

Shri Hukam Chand, Office Secretary of the Union, deposed that Shri Dewan Singh was sick from 25-3-81 to 25-5-81 and met him on 15.5.81 after his return from Village. He further stated that Shri Dewan Singh met him again on 26-5-81 for taking up his case as the Management refused to take him back on duty. He did not take any action as there was an arbitration agreement executed.

In his cross-examination, he said that he came to know about his illness on 6-7th of April, 1981 and he did not consult him while signing the Arbitration Agreement.

The Management examined SarvaShri U.C. Pant, Dy. Manager (Personnel), Shri R.K. Dixit, Personnel Officer, Shri Hira Singh, Head Watchman, Shri Rajpal, Watchman and Shri Niranjan Singh, Watchman,

The Management mainly relied on documents in support of their contention in this case, viz., 25-3-81, 27-3-81 sent under UPC and Registered A/D letter, dated 2-4-81 (copies filed).

The representative of the workman pleaded that the action of the Management was misconceived in the light of medical certificate received and was against the letter and spirit of the standing order. In fact, it was arbitrary as there was no such cause of unauthorised absence as alleged, while the Management maintained that the workman was unauthorisedly absent exceeding ten (10) days despite the notices (copies filed) issued to him and thus the action under clause 15 of the Certified Standing Order was in order and justified.

From the evidences of the parties and the arguments advanced I am inclined to accept the version of the workman as correct in view of the medical certificates, leave applications sent and received by the management. It is evident from the facts and document on record that the management acted in haste to invoke the provision of Standing Order without looking into the medical certificates and leave application sent by the workman. The management had abruptly terminated the services of the workman under the garb of clause 15 of the Certified Standing Order.

In view of these facts, it cannot be held that workman is deemed to have left the services of the management. Thus the issue No. 1 is found in favour of the workman as the management has failed to prove that the workman was unauthorisedly absent as alleged.

In view of my findings above, I award reinstatement of the workman with continuity of services but with 50% back wages for the unemployed period and order accordingly.

No order for cost.

J.D. MEHTA,
Sole Arbitrator.

Forwarded 4 copies) to Secretary, Haryana Government, Chandigarh, Labour and Employment Department, as required under section 17 of Industrial Disputes Act, 1947, for favour of necessary action.

J.D. MEHTA,
Sole Arbitrator.

No. 9(I)-81/6-Lab./14925.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired), Sole Arbitrator, in respect of the dispute between Shri Zile Singh, son of Meer Singh, workman and the management of M/s Hindustan Everest Tools Ltd., Jatheri, Sonepat:—

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR (RETIRED), DY. LABOUR COMMISSIONER,
HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI-110027
SHRI ZILE SINGH, S/O, SHRI MEER SINGH—Workman

versus

THE MANAGEMENT OF M/S. HINDUSTAN EVEREST TOOLS LTD., JATHERI, DISTRICT
SONEPAT, HARYANA

Appearances—

Shri Zile Singh along with Shri Chander Singh, authorised representative.
Shri U.C. Pant along with Shri D.N. Gupta.

ARBITRATION AWARD

The above named parties appointed me as a sole arbitrator in terms of arbitration agreement dated 1st May, 1981 under section 10-A(3) of Industrial Disputes Act, 1947. The arbitration agreement was published in the *Haryana Government Gazette* (extra-ordinary), —vide No. ID/RTK/67/81/26861, dated 27th May, 1981.

The following point in dispute was referred to me for arbitration —

- (1) Whether the action taken by the Management is justified and if not, to what relief the workman is entitled to?

On receipt of the notification, usual notices were issued to the parties. The parties made their appearances, filed statement of claims, written statement as well as rejoinder. The management filed copies of documents in support of their contention in the case whereas the representative of the workman filed documents collectively, without being written by any individual workman. The following issues were framed on the basis of their pleadings with their consent.

- (1) Whether the workman remained unauthorisedly absent exceeding 10 days from duty ?
- (2) Whether the action taken by the Management tantamounts to retrenchment. If so, to what relief he is entitled to?

Thereafter the parties adduced their evidence and advanced their arguments in support of their contentions. There was a lone statement and witness of the workman himself. Shri Zile Singh, workman, deposed that he resorted to Dharna from 9th March, 1981 to 3rd April, 1981 in sympathy with his two comrades on hunger strike and in support of the demand raised by the Union. He further stated that the fact of the Dharna was within the knowledge of the management as Shri Pant Dy. Manager (Personnel) used to visit Head Office from time to time and he exchanged greetings with them. He added that the Dharna/hunger strike was ended with the intervention of officials of the Labour Department on 3rd April, 1981 and he reported for duty on the 4th April, 1981. But he was stopped at the gate by the watchman. He denied any knowledge about the standing order of the Company and also receipt of his dues from the Company.

In his cross-examination, he admitted that he did not apply for leave nor intimated about his Dharna to the Management individually. He denied the receipt of letter dated 11th March, 1981 and 14th March, 1981 sent by the Management under U.P.C., but he later admitted the receipt of one letter and could not say of which date, nor he could tell about the contents of that letter as it was written in English. He did not make any effort to get the contents of the letter read out to him and did not send any reply. He could neither name of the official of the Labour Department, who got the Dharna/hunger strike listed on 3rd April, 1981, nor he could tell the Watchman, who stopped his entry on 4th April, 1981. He, however, admitted that he did not write to the Management for taking him back on duty after the incident of 4th April, 1981 mentioning refusal by the watchman. He admitted his signatures on letter dated 27th June, 1977 Exb. M-1 regarding his confirmation wherein the observance of the Standing Order of the Company has been mentioned. He also admitted his signature on his leave application Exb. M-2 for 6 days from 5th April, 1980 to 10th April, 1980. He denied the receipt of Registered A/D letter, dated 2nd April, 1981, but the same is reported to have been delivered to him by the Postal Authorities as intimated by the Postmaster vide his letter dated 28th April, 1981.

While the Management examined S/Shri U.C. Pant, Dy. Manager (Personnel) and Mr. R. K. Dixit (Personnel Officer) Hira Singh, Head Watchman, Rajpal and Niranjan Singh, Watchmen, as witnesses.

Shri Pant stated that he visits H.O. (Nehru Place) as an official routine and also visited the same during 9th March to 3rd April, 1981. He met S/Shri Jagbeer Singh and Janardhan Ojha and exchanged 'Ram Ram' as well as with some other workers too. He further stated that there were many workers, who after performing their duties visited Nehru Place for Dharna and the number varied from time to time, as the number was not fixed nor the workers. He stated that the list of workers who are dismissed, discharged or resigned etc., is given to the security Supervisor to ensure that these workers are not allowed to enter the factory again. Only two workers namely S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981 as told to him by Shri Hira Singh, Head Watchman. But these workers did not wait at the gate for meeting him though he did not take more than half an hour to reach his office. He further deposed that there was intervention from the Labour Department but without any fruitful result. A copy of the Standing Order is displayed on the notice board and the leave procedure is generally known to the workers. He added that the workers, whose cases are under arbitration did not send any written explanation regarding their unauthorised absence despite notices issued excepting 2 workers namely Jagbeer and Janardhan Ojha, who requested to take back on duty which was received very late. In his cross-examination, he admitted that there was conciliation meeting on general demand notice, dated 6th January, 1981 which has since been rejected and filed by the Labour Department vide their endorsement No. 38707, dated 21st August, 1981. He denied to have received the hunger strike notice vide letter dated 16th March, 1981 Exb.-W-4. He further confessed to have met the Labour Minister, Haryana, when the Deputy Labour Commissioner, Sirpur had called a conciliation meeting where he explained the factual position to the Minister. He

denied the receipt of letter, dated 17th March, 1981 Exb.-W-5, but admitted that letters, dated 3rd April, 1981 Exb. W-6 and the Management letter, dated 15th March, 1981 Exb.-W-7, letter, dated 17th March, 1981 Exb. W-8 and letter dated 19th September, 1981 Exb. W-9. He later denied that the names of the workmen have been struck off and affirmed that the workers who lost their lien on employment was due to un-authorised absence and denied any such action has been taken due to their union activities.

Shri Hira Singh, Head Watchman stated that he was on duty on 4th April, 1981 from 7 A.M. to 7 P.M. S/Shri Ram Chander and Suresh Kumar approached him at about 9 A.M., after being denied the entry by the watchman and wanted to meet Shri U.C. Pant. He went inside to seek instruction from Mr. Pant, who instructed him to bring them in his office. But on his return he did not find S/Shri Ram Chander and Suresh Kumar at the gate. He added that no other workman came to the gate and met him on that day. In his cross Examination he affirmed that he was on duty on 4th April, 1981 and denied any knowledge about Dharna by workers in Nehru Place. He also added that no other workman excepting S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981. He vehemently denied that he has been tutored by the Management to tender his evidence.

Shri Rajpal and Shri Niranjan Singh, Watchmen, deposed that they were on duty on 4th April 1981 at gate No 1. Only S/Shri Ram Chander and Suresh Kumar were refused entry on that day on the advice and instructions received from the Management and the head-watchman was informed, who took further action. They further added that no other workman came on that day and stated that they know the leave procedure as well as the Standing Order. Shri Rajpal watchman, deposed that he was on duty on 19th April, 1981 from 7 A.M. to 3 P.M., 19th April 1981 being Sunday, the factory was closed being weekly rest day, the question of S/Shri Janardhan Ojha and Jagbeer Singh coming on duty on that day does not arise.

In his cross-examination, he told that he knew S/Shri Janardhan Ojha and Jagbeer Singh. He told that he gets knowledge about Standing Orders from Time Office and there was no other workers at gate excepting S/Shri Ram Chander and Suresh Kumar on 4th April, 1981.

Shri Rakesh Kumar Dixit (Personnel Officer) while tendering the evidence explained the procedure adopted in case of absenting workers and showed the Muster Roll for the year 1981 wherein the word "Left" have been recorded against the names of workers whose cases are under arbitration. He also deposed that he heard that workers namely Vikram Pal, Chander Pal, Ram Chander and Bagedan Prashad had got employment with M/s. Super Tools and Zandu Forgings, Bhiwadi (Raj).

In his cross-examination, he could not tell the name of worker, who gave this information to him nor he had any knowledge about the agitation as he joined subsequently.

The parties also advanced their arguments :

The learned representative of the workmen, drew my attention to the illegality of the orders passed by the Management by invoking clause No. 15 of the Standing Order as there was no disobedience or defiance of the Standing Orders. He viewed that the workmen were on peaceful agitation following the Gandhian principles for the acceptance of their justified demands and the Dharna was within the knowledge of the Management. Thus it could not be considered as absent from duty and striking off their names was uncalled for. He further elucidated that there are no such circumstances from which it can be inferred that they had left the services or had any such intentions. In this connection, he relied on the following awards contained in the cases cited below :—

(1) G. T. Lad—versus—Chemical & Fibres India Ltd., in 1979—LIC—P. No. 290

(2) Buckingham Company—versus—Venkatiah—LLJ 1963 P. No. 638.

He also questioned the bona fide of the management in acting harsh and perverse manner to crush the peaceful and constitutional activities of the Union. He further challenged the action of the management that the termination tantamounted to retrenchment in the light of the recent pronouncements of the Supreme court as under :—

- (1) State Bank of India versus Subramiam 1967—1—LLJ P. No. 278.
- (2) Hindustan Steel Ltd. Versus Presiding Officer, Labour Court 1976 LIC P. No. 766.
- (3) Delhi Cloth & General Mills Co. Ltd., Versus Shambunath Mukherjee 1980 LLJ P. No. 1.
- (4) Mohanlal Versus Bharat Electronics Ltd., 1981 LIC—P. No. 806.
- (5) Santosh Gupta Versus State Bank of Patiala—Supreme Court—1980 LIC 1980 P. No. 687.

He accordingly contended that the management did not observe the conditions precedent to retrenchment and committed illegality, thus the workmen are entitled to reinstatement with full back wages.

While the learned counsel of the Management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written requests was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman

was on Dharna excepting his lone statement. The number of workmen on Dharna, period of Dharna etc., have different versions and thus cannot be accepted that a group of workers i.e., 31 or so were constantly on Dharna. He refuted the allegations of the learned counsel from the opposite side that the Management adopted negative/stern attitude about the demand notice, dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position,—*vide* their letters dated Exb.W-7 and W-8 and their stand has been vindicated by the Labour Department, Haryana by rejecting the demand notice *vide* endorsement No. 38707, dated 21st August, 1981. It is, obvious that there was no justification for the workers/Union to create any stir on this account. He also pointed out to the falacious statement that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnesses of S/Shri Hira Singh, Head Watchman and Rajpal and Nirajan Singh, Watchmen. He also pointed out that there is no truth in the statement of S/Shri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day for the factory being Sunday as given out in the statement by Shri Rajpal, Watchman, who was on duty on that day. He pleaded that the Standing Orders have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the management on hunger strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the Union *vide* letter Exb. W-5.

As regards issue No. 2, he argued that "Retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the Management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of Five Judges of the Supreme Court in a case "Barsi Light Railway Co. Ltd., *Versus* K.N. Jogalekar in 1953 and still holds good being the Judgement of a larger Bench. He further viewed that judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

- (1) D.C.M. *Versus* Shambunath Mukerjee.
- (2) State Bank of India *Versus* Subramaniam.
- (3) Hindustan Steel Ltd., *Versus* Presiding Officer, Labour Court and others.

He pointed out that a Division Bench of Bombay High Court have held in case of Kamlesh Kumar, Rajnikant Mehta—*Versus*—Central Government, Industrial Tribunal No. 1 that the termination of services of a workman for loss of confidence is not a retrenchment—1980 LLJ 336 (Bombay). He accordingly pleaded that the 'Surplusage' for retrenchment is implicit in the scheme of Industrial Disputes Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidences adduced by the parties as well as arguments advanced in support of their contentions. My findings issue-wise are as under :—

Issue No. 1.—From the facts and evidence it is clear that there was un-rest amongst some workers due to demand raised by their Union. It is also proved that the demands raised by the Union were not considered fit for any action in view of the existing settlement, dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected,—*vide* its letter No. 38707 on 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of Dharna nor he made any application for leave of his absence. Besides it is on record that the Management sent him letters (Recall notices), dated 11th March, 1981 and 14th March, 1981 under UPC and admitted by him about receipt of one letter and in an indirect manner by the Union *vide* their letter Exb. W-5 dated 17th March, 1981. More so the management did send Registered A/D letter which was delivered by the postal authorities as reported by the Post Master,—*vide* his letter, dated 28th April, 1981. The workman has also admitted that he did not write to the management about his resumption of his duties, after refusal by the Management on 4th April, 1981. This all goes to establish that the workman remained absent unauthorisedly from 9th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the Management under clause 15 of the Standing Order.

The contention of the workmen's counsel that action under clause 15 of the Standing Order was void as there was no dis-obedience or defiance on the part of the workmen has been found untenable as evident from the documentary facts and the affirmation of "recall notice" issued to him by the Management and deliberately ignored by him. Nor the plea of malafide or victimisation is forceful because the workman has himself to be blamed for the disregard of the Standing Order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further, I am inclined to accept the argument of the management counsel that the Standing Orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue number 1 is decided in favour of the Management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2 (oo) of the Industrial Dispute Act 1947, means termination by the employer of the Service of a workman which as a result of positive action of the employer and cannot take in its fold, the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the Standing Order which is reproduced below is quite material and different from that of the D.C.M.

Clause No. 15 of the Certified Standing Order.
Discontinuation of service.

"If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under Standing Orders 1 & 1(b) he shall lose lien on his own appointment and it shall be deemed that he has left the services from the date of his absence unless he explains his absence satisfactorily to the Management".

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 days (fifteen) wages for every completed year of service to the workman which would be equivalent to the compensation payable under section 25(F)(b) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the Management.

Dated the 17th November, 1981

J. D. MEHTA,
Sole Arbitrator,

Forwarded (four copies) to the Secretary, Haryana Government, Chandigarh, Labour and Employment Departments, as required under section 17 of Industrial Dispute Act, 1947, for favour of necessary publication in the Haryana Government Gazette.

J. D. MEHTA,
Sole Arbitrator.

No. 9(I)-81/6Lab./13921.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired) Sole Arbitrator in respect of the dispute between Shri Bagedan Prasad, son of Shri Sohba, workman and the management of M/s. Hindustan Everest Tools, Ltd., Jatheri, Sonepat.

BEFORE SHRI J. D. MEHTA, SOLE ARBITRATOR, RETIRED BY LABOUR COMMISSIONER,
HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DEHLI-110027

SHRI BAGEDAN PRASAD, SON OF SHRI SOHBA (WORKMAN)

Versus

THE MANAGEMENT OF M/S. HINDUSTAN EVEREST TOOLS LTD., JATHERI, DISTRICT SONIPAT
(HARYANA)

Appearances.— (1) Shri Bagedan Prasad, along with Shri Chander Singh (Authorized representative)

(2) Shri U. C. Pant along with Shri D. N. Gupta.

ARBITRATION AWARD

The parties named above appointed me as Sole Arbitrator in terms of arbitration agreement, dated 29th April, 1981 under section 10-A(3) of the Industrial Disputes Act, 1947. The said arbitration agreement published in the *Haryana Government Gazette*, (extraordinary),—vide No. ID/RTK/67/81/26784, dated 27th May, 1981.

The following point in dispute was referred to me for arbitration.

(1) Whether the action taken by the management was justified and if not, to what relief the workman is entitled to?

Usual notices were issued to the parties. The parties made their appearance, filed their statement of claims, written statement and rejoinder. The management filed copies of documents in support of their contention in this case, while the representative of the workman filed collective documents covering all the aspects

without being written by any individual workman. The following issues were framed on the basis of their pleadings with their consent.

- (1) Whether the workman was unauthorisedly absent exceeding 10 days from duty?
- (2) Whether the action taken by the management tantamounts to retrenchment? If so, to what relief he is entitled to.

Thereafter the parties led their evidences and arguments. The workman himself appeared as the only witness in his case and his statement was recorded as under :-

Shri Bagedan Prasad deposed that he resorted to Dharna before Head Office of the Company in Nehru Place, New Delhi from 19th March to 3rd April, 1981 in support of the demands raised by the Union. He further stated that he went for duty on 4th April, 1981, but was refused entry by the Chowkidar. He added that he did not receive any letter from the management during this period and had no knowledge of the rules/standing orders of the Company. He identified S/Shri Janardhan Ojha and Jagbeer Singh on hunger strike in the Photograph Exh. W-1, and added that he had not been paid any compensation by the Management.

In his cross-examination, he denied to have filed any application for employment wherein the terms and conditions of the employment have been laid down Exh. M-1. He admitted that he did not intimate the management his present postal address. He told that he could not tell the names of workers on Dharna and knew that its number was between 30-32. Nor he could tell the name of Chowkidar who stopped his entry on the 4th April, 1981. He denied the receipt of letter dated 24th March, 1981 and 28th March, 1981 sent under UPC by the Management and also the Regd. A/D letter, dated 2nd April, 1981, received back from the Postal Authorities with this endorsements. He, however, admitted that he did not make any written request to the management to take him back on duty after the refusal by the Chowkidar on 4th April, 1981. He admitted that he did not go to the management to collect his dues and would approach the management for money now.

While the management examined S/Shri U.C. Pant, Dy. Manager (Personnel) and Mr. R.K. Dixit (Personnel Officer) Hira Singh, Head Watchman, Rajpal and Niranjan Singh, Watchmen, as witnesses.

Shri U.C. Pant stated that he visited H.O. (Nehru Place) as an official routine and also visited the same during 9th March to 3rd April, 1981. He met S/Shri Jagbeer Singh and Janardhan Ojha and exchanged Ram 'Ram' as well as with some other workers too. He further stated that there were many workers, who after performing their duties visited Nehru Place for Dharna and the number varied from time to time, as the number was not fixed nor the workers. He said that the list of workers who are dismissed, discharged or resigned etc. is given to the Security Supervisor, to ensure that these workers are not allotted to enter the factory again. Only two workers namely, S/Shri Ram Chander, and Suresh Kumar came to the gate on 4th April, 1981 as told to him by Shri Hira Singh, Head watchman. But these workers did not wait at the gate for meeting him though he did not take more than half-an-hour to reach his office. He further deposed that there was intervention from the Labour Department but without any fruitful result. A copy of the standing order is displayed on the notice board and the leave procedure is generally known to the workers. He added that the workers, whose cases are under arbitration did not send any written explanation regarding their unauthorised absence despite notices issued excepting 2 workers namely Jagbeer Singh and Janardhan Ojha, who requested to take back on duty which was received very late. In his cross-examination he admitted that there was conciliation meeting on general demand notice, dated 6th January, 1981 which has since been rejected and filed by the Labour Department, - vide their endorsement No. 38707, dated 21st August, 1981. He denied to have received the hunger strike notice, - vide letter, dated 16th March, 1981, Exh. W-4. He further confessed to have met the Labour Minister Haryana, when the Dy. Labour Commissioner, Sonepat had called a conciliation meeting where he explained the factual position to the Minister. He denied the receipt of letter, dated 17th March, 1981 Exh. W-5, but admitted the letters, dated 3rd April, 1981 Exh. W-6, and the Management letter, dated 15th March, 1981, Exh. W-7, letter, dated 17th March, 1981, Exh. W-8, and Letter dated 19th September, 1981, Exh. W-9. He later denied that the names of the workmen have been struck off and affirmed that the workers who lost their lien on employment was due to unauthorised absence and denied any such action has been taken due to their union activities.

Shri Hira Singh, Head Watchman stated that he was on duty on 4th April, 1981 from 7 A.M. to 7 P.M. S/Shri Ram Chander and Suresh Kumar, approached him at about 9 A.M., after being denied the entry by the watchman and wanted to meet Shri U.C. Pant. He went inside to seek instruction from Shri Pant, who instructed him to bring them in his office. But on his return he did not find S/Shri Ram Chander and Suresh Kumar at the gate. He added that no other workman came to the gate and met him on that day. In his cross-examination, he affirmed that he was on duty on 4th April, 1981 and denied any knowledge about Dharna by workers in Nehru Place. He also added that no other workman excepting S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981. He vehemently denied that he has been tortured by the management to tender his evidence. Shri Rajpal and Shri Niranjan Singh, Watchmen, deposed that they were on duty on 4th April, 1981 at gate No. 1. Only S/Shri Ram Chander and Suresh Kumar were refused entry on that day on the advice and

instructions received from the Management and the Head-watchman was informed, who took further action. They further added that no other workmen came on that day and stated that they know the leave procedure as well as the standing order. Shri Rajpal, Watchman, deposed that he was on duty on 19th April, 1981 from 7 A.M. to 3.00 P.M. 19th April, 1981 being Sunday, the factory was closed being weekly rest day, the question of S/Shri Janardhan Ojha and Jagbeer Singh coming on duty on that day does not arise.

In his cross-examination, he told that he knew S/Shri Janardhan Ojha and Jagbeer Singh. He told that he gets knowledge about standing orders from time office and there was no other workers at gate excepting S/Shri Ram Chander and Suresh Kumar on 4th April, 1981.

Shri Rakesh Kumar Dixit (Personnel Officer) while tendering the evidence explained the procedure adopted in case of absenting workers and showed the Muster roll for the year 1981 wherein the word "left" have been recorded against the names of workers whose case are under arbitration. He also deposed that he heard that workers, namely, Vikram Pal, Chander Pal, Ram Chander and Bagdan Piasad had got employment with M/s Super Tools and Zandu Forgings, Bhiwadi(Raj). In his cross-examination, he could not tell the names of worker, who gave this information to him nor he had any knowledge about the agitation as he joined subsequently.

The parties also advanced their arguments :—

The learned representative of the workman, draw my attention to the illegality of the orders passed by the Management by invoking Clause No. 15 of the Standing Order as there was no disobedience and defiance of the standing orders. He viewed that the workman was on peaceful agitation following the Gandhian principles for the acceptance of their justified demands and the Dharna was within the knowledge of the Management. Thus it could not be considered as absent from duty and striking off their names was uncalled for. He further elucidated that there are no such circumstances from which it can be inferred that they had left the services or had any such intentions. In this connection, he relied on the following awards contained in the cases cited below:—

- (1) G.T. Lad *versus* Chemical and Fibres India Ltd., in 1979—LIC P. No. 290.
- (2) Buckingham Co., *versus* Venkatiah —LLJ 1963, page No. 638.

He also questioned the bona fide of the management in acting in harsh and perverse manner to crush the peaceful and constitutional activities of the Union. He further challenged the action of the management that the termination tantamount to retrenchment in the light of recent pronouncement of the Supreme Court as under:—

- (1) State Bank of India *versus* Subramania,—1967—1-LLJ-P. No. 278.
- (2) Hindustan Steel Ltd. *versus* Presiding Officer, Labour Court,—76 LIC. P. No. 766.
- (3) Dehli Cloth & General Mills Co. Ltd., *versus* Shambunath Mukherjee—80—LLJ P. No.1.
- (4) Mohanlal *versus* Bharat Electronics Ltd., 81-Page-LIC-806.
- (5) Santosh Gupta *versus* State Bank of Patiala-LIC-1980, P.No. 687.

He accordingly contended that the management did not observe the conditions precedent to retrenchment and committed illegality, thus the workman is entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written request was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was on Dharna excepting his lone statement. The number of workmen on Dharna, period of Dharna, etc. have different versions and thus cannot be accepted that a group of workers, i.e. 31 or so were constantly on Dharna. He refuted the allegation of the learned counsel from the opposite side that the management adopted negative/stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position,—*vide* their letters, dated Exb. W-7 and W-8, and their stand has been vindicated by the Labour Department Haryana, by rejecting the demand notice,—*vide* endorsement No. 38707, dated 21st August, 1981. It is, obvious, that there was no justification for the workers/union to create any stir on this account. He also pointed out to the falacious statements that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnessess of S/Shri Hira Singh, Head Watchman and Rajpal and Niranjan Singh, Watchman. He also pointed out that there is no truth in the statement of S/Shri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, Watchman, who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during and agitation. Nor every absentee can be presumed by the management on hunger strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the Union —*vide* letter Exb. W-5.

As regards issue No. 2, he argued that "Retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of five Judges of the Supreme Court in a case "Barsi Light Railway Co. Ltd. versus K. N. Jogalekar" in 1953 and still holds good being the judgement of a larger bench. He further viewed that judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

- (1) DCM versus Shambunath Makherjee
- (2) State Bank of India versus Subramaniam
- (3) Hindustan Steel Ltd. versus Presiding Officer, Labour Court, Orissa & others.

He pointed out that a division bench of Bombay High Court have held in case of Kamlesh Kumar, Rajnikant Mehta versus Central Government Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment-1980 LLJ 336 (Bombay). He accordingly pleaded that the "Surplusage" for retrenchment is implicit in the scheme of Industrial Dispute Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidence adduced by the parties as well as arguments advanced in support of their contentions. My findings issue-wise are as under:—

(1) From the facts and evidence it is clear that there was un-rest amongst some workers due to demands raised by their union. It is also proved that the demands raised by the union were not considered fit for any action in view of the subsisting settlement dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected,—*vide* its letter No. 38707, dated 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of Dharna nor he made any application for leave of his absence. Besides it is on record that the management sent him letters (recall notices) under UPC, and admitted in an indirect manner by the Union,—*vide* their letter dated 17th March, 1981. Exb. W-5. More so, the management did send Registered A/D letter which was returned by the postal authorities. The workman has also admitted that he did not write to the management about his resumption of his duties, after refusal by the management on 4th April, 1981. This all goes to establish that the workman remained absent unauthorisedly from 19th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the Management, under clause 15 of the Standing Order. The factum of having replied on the, 4th April, has also not been proved.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no dis-obedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of "recall notices" issued to him by the management and deliberately ignored by him, nor the plea of malafide or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further, I am inclined to accept the argument of the management counsel that the standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue number 1 is decided in favour of the Management.

As regards Issue No. 2, the Rulings stated by the learned representative of the workmen have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2 (oo) of the Industrial Disputes Act, 1947 means termination by the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold, the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the standing order which is reproduced below is quite material and different from that of the DCM.

Clause No. 15 of the Certified Standing Order—Discontinuation of service.

"If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12(b) he shall lose his own appointment and it shall be deemed that he has left the services from the date of his absence unless he explains his absence satisfactorily to the management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 days (fifteen) wages for every complete year of service to the workman which would be equivalent to the compensation payable under section 25(F)(b) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the Management.

Dated the 18th November, 1981.

J. D. MEHTA,
Sole Arbitrator.

Forwarded (four copies) to the Secretary, Haryana Government, Chandigarh, Labour and Employment Department, as required under section 17 of the Industrial Disputes Act, 1947, for favour of necessary publication in the Haryana Government Gazette.

J. D. MEHTA,
Sole Arbitrator.